IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/04/2003

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.2219 of 1998
and W.P.Nos. 5578 and 5636 of 1998

W.P.No.2219 of 1998:

G.Sivalingam .. Petitioner

-Vs-

1. State of Tamil Nadu
rep. by the Secretary to Govt.
Housing and Urban Development
Department
Fort St. George
Chennai-600 009.

2. The Land Acquisition Officer &
Special Deputy Collector (L.A.)
C.M.D.A., Egmore
Chennai-600 008. .. Respondents

W.P.No.5578 of 1998:

S.Elumalai .. Petitioner

versus

1. The Secretary to Government
Housing and Urban Development
St. George, Madras-600 009.

2. The Land Acquisition Officer
C.M.D.A. Madras-600 008. .. Respondents

W.P.No.5636 of 1998:

S.Jaganathan .. Petitioner

versus
1. The Secretary to Govt.
Housing and Urban Development
Department

Fort St. George
Chennai-600 009.

2. The Land Acquisition Officer &
Special Deputy Collector (L.A.)
C.M.D.A., Egmore
Chennai-600 008. .. Respondents

For petitioners : Mr.S.N.Narasimhalu

For respondents : Mrs.D.Malarvizhi
Government Advocate

:ORDER

In these writ petitions, the petitioners are challenging the acquisition of land, pursuant to the notification issued under Section 4(1) of the Land Acquisition Act (hereinafter referred to as "the Act") in G.O.Ms.No.248, Housing and Urban Development Department dated 9.3.19 94, declaration made under Section 6 of the Act in G.O.Ms.No.595, Housing and Urban Development Department, dated 28.6.1995, and the final notice dated 27.6.1997 issued by the second respondent under Section 47 of the Act.

2. The Petitioner in W.P.No.2219 of 1998 is the owner of an extent of 0.01.5 hectares in Survey No.126/1A and 0.05.5 hectares in Survey No.125/2A; the petitioner in W.P.No.5578 of 1998 is the owner of an extent of 0.01.0 hectares in Survey No.126/1C and 0.05.0 hectares in Survey No.126/2C; and the petitioner in W.P.No.5636 of 1998 is the owner of an extent of 0.05.0 hectares in Survey No.126/2B, located in Manjambakkam Village, Ambattur Taluk, Chengai MGR District (now Chingleput District).

3. The petitioners are challenging the acquisition of their respective lands, pursuant to a notification issued under Section 4(1) of the Act made in G.O.Ms.No.248, Housing and Urban Development Department dated 9.3.1994 and the consequential declaration made under Section 6 of the Act in G.O.Ms.No.595, Housing and Urban Development Department dated 28.6.1995 by the first respondent as well as the final notice dated 27.6.1997 issued by the second respondent under Section 47 of the Act for the surrender of the land acquired.

4. It is not in dispute that by G.O.Ms.No.248, Housing and Urban Development Department dated 9.3.1994, issued under Section 4(1) of the Act and G.O.Ms.No.595, Housing and Urban Development Department dated 28.6.1995 issued under Section 6 of the Act, the petitioners' lands were acquired for a public purpose i.e., to wit for development of residential and commercial neighbourhood scheme on both sides of the Inner Ring Road to ensure and to regulate orderly development by Madras Metropolitan Development Authority under their project known as A1 Land Assembly and Development project along Inner Ring Road, over an extent of 5.81.0 hectares in Manjambakkam Village,

Saidapet Taluk, Chengai MGR District (now Chingleput District).

5.1. The main grievance of the petitioners, as projected by Mr.S.N. Narasimhalu, learned counsel for the petitioners, is that each of the petitioners, have built their dwelling houses in their respective lands, and therefore, failure to consider their objections in that regard, in the enquiry conducted under Section 5-A of the Act, with respect to the impugned acquisition for an identical purpose, viz. for a housing scheme, is unjustified and arbitrary. In this regard, Mr.S.N. Narasimhalu, learned counsel for the petitioners, places reliance on the decision in THIRUVENGADAM,R. V. SECRETARY TO GOVT. HOUSING DEPARTMENT, GOVT. OF T.N., MS-9. reported in 1997 (II) CTC 323.

5.2. That apart, it is also contended on behalf of the petitioners that the lands in question are claimed to be located in the corner of the project area and therefore, the same could be exempted from the project without affecting its implementation.

6.1. Per contra, the learned Government Advocate contends that the impugned land acquistion is intended for a public purpose viz., to wit for development of residential and commercial neighbourhood scheme on both sides of the Inner Ring Road to ensure and to regulate orderly development by Madras Metropolitan Development Authority under their project known as A1 Land Assembly and Development project along Inner Ring Road, over an extent of 5.81.0 hectares in Manjambakkam Village, Saidapet Taluk, Chengai MGR District (now Chingleput District), and therefore, the individual inconveniences cannot be a consideration to hold the very purpose of acquisition as unjustified and arbitrary.

6.2. The learned Government Advocate further contends that the lands in question having already been acquired and declaration had also been made as early as 28.6.1995, by G.O.Ms.No.595, Housing and Urban Development Department, pursuant to which, symbolic possession had already been taken by the M.M.D.A., to execute the said project, it may not be proper to entertain the above writ petition at this belated point of time viz., when notice under Section 47 of the Act was issued by the second respondent for taking possession of the land, to enforce the surrender of lands to the acquisition authority.

7. I have given due consideration to the propelling and repelling submissions of both sides.

8.1. No grievance was put forth on behalf of the petitioner as to any procedural lapse in the impugned proceedings, inasmuch as the petitioners have been given a fair and reasonable opportunity to make their objections to the acquisition proposed in G.O.Ms.No.248, Housing and Urban Development Department dated 9.3.1994.

8.2. It is true that the right to shelter is a fundamental right

under Article 19(1) of the Constitution of India. To make such right more meaningful, no doubt, the objection made on behalf of the petitioner on that score should be approached pragmatically. But, when the land in question was sought to be acquired for a public purpose, viz., to wit for development of residential and commercial neighbourhood scheme on both sides of the Inner Ring Road to ensure and to regulate orderly development by Madras Metropolitan Development Authority under their project known as A1 Land Assembly and Development project along Inner Ring Road, in my considered opinion, such a larger interest would prevail over the rights of the individuals, as the petitioners are still entitled to seek an alternative accommodation under the ex-owner category.

8.3. It is trite law that when there is an inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The discretionary power conferred under Article 226 of the Constitution of India enables to quash the notification issued under Section 4(1) of the Act as well as the declaration made under Section 6 of the Act, and such power should be exercised, taking all relevant facts into pragmatic consideration, particularly when a declaration was already made and an award was passed and possession was also taken, vide MUNICIPAL CORPN., GREATER BOMBAY V. I.D.I. CO. PVT. LTD. reported in AIR 1997 SC 482 and C.PADMA V. DY SECRETARY TO THE GOVT. OF T.N. reported in (1997) 2 SCC 627.
Therefore, inordinate delay on the part of the petitioners in challenging the acquisition proceedings cannot be condoned merely on the ground that they are living in the respective lands and continued to be in possession of the same.

8.4. The contention of the petitioners that the lands in question would still be exempted from the acquisition proceedings, as it would not affect the implementation of the project, in my considered opinion, has to be weighed by the appropriate authority. Therefore, while finding no merits in the above writ petition for the reasons stated above, the petitioners are also permitted to make a representation to the authorities within thirty days from the date of receipt of a copy of this order, seeking exemption for their respective lands from the impugned project, explaining that any exclusion or exemption of the lands in question from the project would not affect the project or the public interest at large, and in which event, the respondent shall consider the representation of the petitioners and pass appropriate order within sixty days from the date of receipt of such representation. The liberty given to the petitioners as above, cannot be construed as a matter of right.

The writ petition is dismissed with the above observation. No costs.

Index: Yes
Internet: Yes 10.04.2003
ksv/kpl

To:

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